



October 1, 2015

Submitted electronically via notice.comments@irs.counsel.treas.gov

CC:PA:LPD:PR (Notice 2015-52)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Request for Comments re: **Notice 2015-52, Section 4980I – Excise Tax on High Cost Employer-Sponsored Health Coverage**

Dear Secretary Lew and Commissioner Koskinen:

On behalf of the National Association of Counties (NACo) and the 3,069 counties we serve, we respectfully submit comments on the Internal Revenue Service's (IRS) Notice 2015-52 that seeks to continue the process of developing regulatory guidance for Internal Revenue Code (IRC) Section 4980I – Excise Tax on High Cost Employer-Sponsored Health Coverage.

Founded in 1935, NACo is the only national organization that represents county governments in the United States and assists them in pursuing excellence in public service to produce healthy, vibrant, safe and resilient counties. A vital component for counties in this pursuit is a high quality workforce. One of the primary ways counties attract and maintain a quality workforce is by offering competitive healthcare benefits. In 2014, an estimated 2.5 million county employees and nearly 2.4 million of their dependents were enrolled in health plans offered by county governments.¹

Since Notice 2015-52 supplements Notice 2015-16, to which NACo also submitted comments, we continue to express our concerns with respect to section 4980I in general. **As a matter of policy, NACo opposes the taxation of employer-sponsored health coverage due to the significant impact it will have on county budgets.** We support a full legislative repeal of the excise tax and by commenting on this notice, NACo is not endorsing the implementation of the tax in any way.

Several studies show that the 40 percent tax on health benefits will apply not only to high cost plans, but also moderate health plans with more expensive premiums. Such plans have greater numbers of women, older workers, retirees or employees or families with serious health conditions. Moreover, because the

¹ Istrate, Emilia, Kirk Heffelmire and Molly Longstreth. County Health Benefits Study 2014. Washington, D.C.: National Association of Counties. Available at: <http://www.naco.org/research/Pages/county-health-benefits.aspx>

tax is based on the cost, and not the value, of the coverage, it will have a disproportionate effect on counties located in higher-cost areas of the country. For instance, a county in the northeast may pay significantly more than a county in the central region for the exact same coverage plan.

Furthermore, counties are not only concerned with maintaining a healthy workforce; they are also concerned with finding ways to reduce health care costs. Unfortunately, the cost of coverage that the tax is based on includes benefits in addition to core medical coverage. As a result, the ability of counties to reduce those costs by utilizing tools such as wellness plans will be substantially hindered. According to a recent NACo survey (2014), more than 80 percent of counties offer at least one wellness program to county employees.² Inclusion of this and other tools like on-site medical clinics and flexible spending arrangements in the calculation of the cost of coverage will only compound the challenge for counties.

Finally, if the excise tax is fully implemented in 2018, counties remain concerned that the administrative burden of having to calculate the excess coverage, assessing available adjustments to the applicable dollar threshold and determining the amount of the tax on a monthly basis (among other tasks) could impose additional significant costs.

Therefore, should the U.S. Treasury Department and IRS continue to move forward with developing the regulations, we urge that the most flexible approach be taken so that counties are not penalized for simply offering vital health benefits to public servants.

Comments in Response to Notice 2015-52

NACo would like to offer the following brief comments in response to some of the issues raised in Notice 2015-52.

- **Persons liable for the 40 percent tax.** There are two approaches discussed in the notice to determine the person who administers a self-insured health plan. This designation would ultimately deem that person as the coverage provider liable for the 40 percent tax. NACo supports the approach whereby the person that administers the plan is the party that has the ultimate authority or responsibility under the health plan with respect to the administration of plan benefits, including final decisions on administrative matters. Under this scenario, in most cases the person would be identified in the plan document and would generally be the employer.
- **Timing of the determination of the cost of applicable employer-sponsored coverage.** NACo urges the U.S. Treasury Department and IRS to provide in regulatory guidance that all information necessary for employers to determine whether the cost of their health plan options exceeds the thresholds for the subsequent taxable period (including the threshold amounts and age and gender adjustment table) is provided with sufficient time in advance of that taxable period. Due to factors such as budget cycles and negotiating multi-year labor contracts, counties

² *Ibid.*

must make benefit design decisions and budget for health coverage well in advance of the plan year.

- **Age and gender adjustment.** NACo recommends that the age and gender adjustment be adequate to ensure that public employers are not penalized for hiring older Americans and/or women. An analysis of data from the Annual Social and Economic supplement to the Current Population Survey shows that in 2013, 52.1 percent of local government employees are between the ages of 45 and 64.³ Additionally, by 2013, 57.7 percent of jobs in local government were held by women.⁴ NACo urges the U.S. Department of Treasury and IRS to provide information related to the age and gender adjustment well in advance of the taxable period to provide counties with sufficient time to complete the calculation and to minimize the administrative burden.

Conclusion

We appreciate the opportunity to share our comments and concerns in response to Notice 2015-52. We will continue to seek a legislative repeal of the excise tax. But as you continue forward on implementing the tax, we again urge you to use all available authority to minimize the unintended and highly detrimental consequences on county government and the constituents we represent.

We look forward to working together to address these concerns. If you have any questions, please free to contact Michael Belarmino, NACo Associate Legislative Director, at mbelarmino@naco.org or 202.942.4254 or Brian Bowden, NACo Associate Legislative Director, at bbowden@naco.org or 202.942.4275.

Sincerely,



Matthew D. Chase
Executive Director
National Association of Counties

³ Gerald Mayer, *Selected Characteristics of Private and Public Sector Workers* (CRS Report No. R41897) (Washington, DC: Congressional Research Service, 2014), 8–10, <https://www.fas.org/sgp/crs/misc/R41897.pdf>.

⁴ *Ibid.*